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July 15, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 93-48

Dear Mr. Caton:

Transmitted herewith on behalf of Children's Television Workshop are an original and nine copies of its Reply Comments in the above-referenced proceeding.

Respectfully submitted,

*Barbara K. Gardner*

Barbara K. Gardner

BKG/kkj  
Enclosures

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List A B C D E

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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In the Matter of )  
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Policies and Rules Concerning )  
Children's Television Programming )  
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Revision of Programming Policies )  
for Television Broadcast Stations )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 93-48

To: The Commission

REPLY COMMENTS OF  
CHILDREN'S TELEVISION WORKSHOP

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July 15, 1994

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### **Summary**

Children's Television Workshop, creators of such educational children's programs as *Sesame Street*, *Ghostwriter*, and *Cro*, applauds the Commission for focusing public attention on the power and the duty of television to reach and teach our children. At this critical juncture, the Commission should clearly and aggressively foster television's potential to educate, not signal a retreat from the goals of the Children's Television Act. In particular, CTW reminds the Commission of the evidence presented at its June 28, 1994 en banc hearing that absent both steady pressure and clear direction from Washington, the television marketplace fails to produce significant amounts of educational and informational children's programming.

To meaningfully implement the Act's goal of increasing children's access to television programming "specifically designed" to meet their educational needs, the Commission should adopt CTW's proposal that such programming must:

- be developed with the assistance of educational advisors, such as teachers or child development experts;
- be created to fulfill explicit written educational goals (a copy of which should be placed in the station's public file with its children's educational programming lists); and

- be tested for its educational effectiveness (with a copy of the results placed in the public file).

CTW's proposal has numerous benefits, many of which were echoed by witnesses at the en banc hearing. The test quite literally implements the "specifically designed" language of the statute. In addition, CTW's test is objective. By contrast, both the FCC's proposal that a qualifying program must have a "primarily educational" purpose, and Disney's suggestion that education must be "a significant" purpose of such a program, would require the Commission to make subjective assessments of program content. CTW's proposal also provides clear guidance to licensees, facilitates FCC review, and will not create unnecessary licensee burdens. Indeed, many producers and broadcasters already utilize expert advisors and develop written educational goal statements when creating qualifying children's television programming.

The Commission should adopt CTW's definition of children's educational programming, and thereby provide clearly delineated performance requirements with which licensees will readily comply. Anything short of this will result in a retreat from the Commission's mission to meaningfully implement the Children's Television Act.

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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To: The Commission

**REPLY COMMENTS OF**  
**CHILDREN'S TELEVISION WORKSHOP**

Children's Television Workshop ("CTW") hereby responds to testimony presented at the Commission's June 28, 1994 en banc hearing on the Notice of Inquiry in the above-captioned proceeding, 8 FCC Rcd 1841 (1993) ("Notice"). CTW applauds the Commission for focusing public attention on the power and the duty of television to reach and teach our children. At this critical juncture, the FCC should act decisively to advance and fulfill "Congress' intent to expand and improve the level of educational and informational programming directed at children,"<sup>1/</sup> rather than leave in place an imprecise, laissez-

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<sup>1/</sup> Notice, 8 FCC Rcd at 1841.

faire regulatory regime that will, all too soon, result in a de facto retreat from the important goals embodied in the Children's Television Act. In particular, CTW urges adoption of its proposed objective definition of qualifying children's educational programming, and reminds the Commission of the evidence presented at the hearing that absent both steady pressure and clear direction from Washington, broadcasters historically have allowed "the garden of children's television [to become] overgrown with weeds."<sup>2/</sup>

**I. What Qualifies as "Core" Children's Educational Programming?**

The Children's Television Act requires licensees to serve children's educational and informational needs through their overall programming, "including programming specifically designed to serve such needs." In its Notice, the FCC proposes to require that qualifying "specifically designed" standard-length programming --called "core" programming in the Notice -- be primarily educational and only secondarily entertainment.<sup>3/</sup>

CTW, along with Disney and most broadcasters, opposes the primary/secondary test as setting up a false dichotomy, since

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<sup>2/</sup> Testimony of Squire D. Rushnell at 1 (June 28, 1994).

<sup>3/</sup> Notice, 8 FCC Rcd at 1842-43.

programming must "reach" before it can "teach" -- that is, must entertain or it will not be watched. For example, *Cro*, a series produced by CTW for the current ABC Network Saturday morning children's schedule, combines basic applied science concepts with an animated comedy/adventure format in order to engage, entertain and educate a large child audience. Bill Nye testified that his *Bill Nye The Science Guy* "is more than 50 percent entertainment -- or kids wouldn't watch."<sup>4/</sup>

As articulated more fully in the hearing testimony of CTW's President and CEO David Britt, in lieu of the Commission's "primary purpose" definition, CTW advocates that qualifying "specifically designed" programming:

- be developed with the assistance of educational advisors such as teachers or child development experts;
- be created to fulfill explicit written educational goals (a copy of which should be placed in the station's public file with its children's educational programming lists); and
- be tested for its educational effectiveness (with a copy of the results placed in the public file).

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<sup>4/</sup> Testimony of Bill Nye at 3 (June 28, 1994).



CTW's proposal has numerous benefits, many of which were echoed by witnesses at the en banc hearing. **First**, the test quite literally implements the "specifically designed" language of the statute. As Jennie Trias of ABC Children's Entertainment testified, the term "specifically designed" "means the broadcaster must be able to demonstrate that the program had a clearly articulated plan to achieve an educational goal. The Commission can test the broadcaster's good faith by asking what the educational plan is and what steps were taken to ensure it is carried out."<sup>5/</sup> By thus requiring producers (and those broadcasters who elect to create children's educational programming) to focus on planning and effectively executing such programming, the Act's goal of increasing the amount and quality of children's educational programming will necessarily be met.

**Second**, CTW's test is objective. As witnesses pointed out, the FCC's proposed "primary educational objective" test not only would result in programming that is not watched because entertainment values have been relegated to "secondary" status, but also

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<sup>5/</sup> Prepared Remarks of Jeanette B. Trias, President, ABC Children's Entertainment ("ABC Testimony"), at 2 (June 28, 1994).

would be entirely subjective. The Commission would find itself screening programs to decide whether the educational content is enough to make it 'primary' or whether the entertainment component is too significant.

ABC Testimony at 2.<sup>6/</sup> Disney's proposed substitute for the FCC's primary purpose test -- that "a significant" purpose of a qualifying program be to educate -- suffers from the same flaw. It, too, is a highly subjective test, potentially requiring the Commission to screen programs to determine if education is "a significant" purpose of the program.

By contrast, under CTW's proposal the FCC does not have to decide whether a given program is educational; it can avoid subjective content-based judgments (and resulting possible First Amendment problems) altogether. If the licensee has followed the above three steps -- that is, for each program, has utilized expert advisors, developed written educational goals, and tested the program's effectiveness in meeting these goals -- its programming will be deemed to qualify.

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<sup>6/</sup> See also Oral Presentation of Margaret Loesch, President, Fox Children's Network ("Fox Testimony"), at 10 (June 28, 1994) (noting "extraordinary difficulty and subjectivity of the judgment on which side of the fine entertainment/educational line a particular program will fall . . .").

**Third**, the licensee does not have to guess whether it is meeting the FCC's requirements. Broadcasters are given the specific guidance that they want and need.

**Fourth**, FCC review is facilitated. The public file information submitted with the renewal application can be quickly examined for compliance with the above objective criteria.

**Fifth**, the licensee is not unnecessarily burdened. Testimony at the en banc hearing demonstrates that most producers and broadcasters who create educational children's programs already use expert advisors in planning their offerings. For example, ABC's Broadcast Standards director has a doctorate in child psychology, while its children's programming editor has ten years of teaching experience. NBC hired educator Dr. Karen Hill-Scott to qualify its existing children's schedule under the Act; in her testimony, Dr. Hill-Scott explained how she developed and implemented educational objectives for each episode of each of the three programs in question, working continuously with the creators and producers of the episode from initial concept to review of the final product.<sup>1/</sup> At Fox, according to the testimony of Margaret Loesch, president of Fox Children's

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<sup>1/</sup> Testimony of Karen Hill-Scott, Ed.D. ("NBC Testimony"), at 10-11 (June 28, 1994).

Network, independent expert consultants are employed for each educational children's program, and an Advisory Board of child experts screens the results.<sup>8/</sup>

And lest the Commission think that such advisors cannot be obtained by local broadcasters, CTW notes the statement of the National Education Association's Dr. Gary Watts at the en banc hearing that, within one week of receiving a request, his organization could provide the names of appropriate teachers or other education experts in every community in the country.

In short, expert advisors stand ready and able to assist in creating children's programming that will educate. To fulfill the Act's mandate of increasing children's access to "specifically designed" educational programming, the Commission must, as Dr. Hill-Scott pointedly remarked, stimulate this process whereby the community of scholars and child development specialists routinely sits at the creative table in collaboration with the production and broadcast communities.<sup>9/</sup>

With respect to CTW's second proposed requirement, the act of concisely defining what cognitive and affective learning is to be accomplished through a given educational television

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<sup>8/</sup> Fox Testimony at 4, 8.

<sup>9/</sup> NBC Testimony at 12-13.

program -- what specific skills, information, or attitudes are to be imparted -- is necessarily integral to the process of creating that program, not an added reporting burden. The importance of articulating a children's television program's explicit educational goals at the very beginning of the creative process was underscored at the hearing by both program producers and child education specialists. Testifying for NBC, Dr. Hill-Scott described the "abbreviated treatment" developed at the pre-script stage of each children's episode in order to integrate educational message and plotline, and the companion materials created to provide a written articulation of the goal or message.<sup>10/</sup> Similarly, each episode of the *Johnson & Friends* component of the Fox Children's Network's new weekday educational series *Fox Cubhouse* "will be carefully crafted to address the emotional and educational needs of today's preschooler, dealing with topics such as sharing, friendship, teamwork, individuality and family concepts in a developmentally appropriate way."<sup>11/</sup>

The National Education Association, the American Psychological Association and Peggy Charren all agree with CTW that the FCC should require licensees to stipulate the

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<sup>10/</sup> Id. at 11.

<sup>11/</sup> Fox Testimony at 4.

educational goal or curriculum of each "core" educational children's program.<sup>12/</sup> Since the statute requires each licensee to air some programming "specifically designed to serve the educational and informational needs of children," it is only logical for the Commission, as ABC's Jennie Trias stated, to ask the broadcaster what educational needs a program was designed to serve. See also NBC's June 7, 1993 Reply Comments in this proceeding at pages 5-10, supporting CTW's proposal.

CTW's final proposed requirement is also not burdensome. To qualify a children's program or series as educational, the broadcaster should be required to demonstrate that its effectiveness has been tested, and the findings placed in the public inspection file. Like the goal statement, the post-broadcast assessment need not be elaborate or complex. On the local level, the independent expert advisor -- perhaps a teacher or university professor -- can devise and carry out such a review, which could be as simple as a focus group. Moreover, to encourage innovation, stations should get full credit for a

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<sup>12/</sup> Testimony of Dr. Gary D. Watts, on behalf of the National Education Association ("NEA Testimony"), at 1-2, 3 (June 28, 1994); Testimony of Dale Kunkel, Ph.D., on behalf of the American Psychological Association ("APA Testimony"), at 6 (June 28, 1994); Testimony of Peggy Charren at 12 (June 28, 1994).

program even if its educational goals are not fully achieved. The key determinant should be whether a good faith effort was made to achieve compliance. And public scrutiny, manifested through the public's opportunity to participate in the broadcast renewal process, is the best vehicle for judging such good faith.

Last, CTW believes that as they begin to take the educational needs of children more seriously, producers and broadcasters are also more likely to acquire a greater sense of responsibility with respect to eliminating gratuitous violence in the children's programming they create, another public policy goal frequently cited by Congress.

For all the above reasons, CTW's suggested definition of qualifying "core" programming is not only workable, but also will meaningfully effectuate the goals of the Children's Television Act. Moreover, this proposal is superior to Disney's, which would simply require that "a significant" purpose of a qualifying program be to educate. Disney's proposal takes account of the fact that effective educational programming must also entertain, but it lacks most of the additional advantages of CTW's proposal set forth above. In particular, as previously noted, it suffers from the same flaw as the FCC's proposed

"primary educational purpose" test, since both require the Commission to make subjective assessments of program content.

In addition, Disney would rely on the judgment of the licensee to determine whether a "significant purpose" of a given program is to educate. CTW submits that the Commission has already noted the propensity of some broadcasters to claim that such programs as *The Flintstones*, *G.I. Joe* or *The Jetsons* are educational.<sup>13/</sup> Indeed, CTW agrees with James Steyer of Children Now, who stated, in response to a question at the en banc hearing, that adoption of the Disney "significant purpose" test will result in no material change in the quantity or quality of educational children's programming available to today's children. With such a vague, non-objective test, it would be easy for a program producer or broadcaster to make a purportedly "good faith" claim of significant educational purpose for a program; but if the claim must be backed by actual evidence that the program is "specifically designed" to meet children's

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<sup>13/</sup> Notice, 8 FCC Rcd at 1842 & n.15. See also APA Testimony at 4 (independent study by Dr. Dale Kunkel found licensees listed as educational such programs as *G.I. Joe*, *Teenage Mutant Ninja Turtles*, and *The Jetsons*); Testimony of Dr. Kathryn C. Montgomery, President, Center for Media Education ("CME Testimony"), at 1 (1992 CME report found stations relabeled *The Jetsons* and *G.I. Joe* as educational).



educational needs, as CTW and others propose, the difference will be palpable.

**II. The Commission Should Clearly and Aggressively Foster Television's Potential to Educate, Not Signal a Retreat From the Goals of the Children's Television Act.**

As actor Sheldon Turnipseed of CTW's *Ghostwriter* testified, television's potential to educate in positive ways -- to impart not just cognitive learning, but models for decisionmaking, racial harmony, and valuing basic educational skills, for example -- can be of critical importance to today's children. Others, such as NBC, echoed this goal.<sup>14/</sup>

Yet over and over, responsible testimony was offered demonstrating that without a strong impetus from Washington, broadcasters will not meaningfully serve either the cognitive or affective educational needs of children. Squire Rushnell, formerly ABC Vice President of Children's Television, presented dramatic evidence of the decline in network educational television for children since the early 1980s, when the Commission discontinued enforcing a children's programming

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<sup>14/</sup> NBC Testimony at 4 (Because developing social competence, promoting inter-group tolerance, and instilling human dignity are "keys to salvaging our nation's future," programming with such objectives is legitimately educational).

obligation. Similar documentation of the failure of the unregulated marketplace to produce significant amounts of educational children's programming was provided by Dr. Dale Kunkel, Peggy Charren, and the Center for Media Education.<sup>15/</sup>

Many witnesses also urged the FCC to make its educational programming requirements clearer.<sup>16/</sup> As the Commission itself has noted, "where the CTA [Children's Television Act] has imposed specific, palpable performance standards -- as it has with respect to commercial time limits in children's programming -- broadcasters' compliance rate appears to be quite high."<sup>17/</sup>

Moreover, when combined with aggressive enforcement, clear standards are even more effective. For example, because the children's television commercial time limits are precise and the Commission now enforces them rigorously, broadcasters take those limits even more seriously than they previously did. By contrast, not a single licensee has been sanctioned for failing

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<sup>15/</sup> See APA Testimony at 1-3; Testimony of Peggy Charren at 6-7; CME Testimony at 3; P. Aufderheide and K. Montgomery, "The Impact of the Children's Television Act on the Broadcast Market" (attachment to CME Testimony), at 7-9, 23-24.

<sup>16/</sup> See, e.g., APA Testimony at 6; NEA Testimony at 3; Testimony of James Steyer, on behalf of Children Now, at 1, 2.

<sup>17/</sup> Notice, 8 FCC Rcd at 1842 (footnote omitted).

to broadcast programming specifically designed to meet children's educational needs, despite the fact that the Commission in 1993 found "little change in available programming that addresses the needs of the child audience."<sup>18/</sup> The adoption and enforcement of CTW's objective standard would provide clearly delineated performance requirements with which licensees will readily comply, thereby permitting the Children's Television Act to fulfill its promise as a real force for educating children.

### Conclusion

Because licensees have historically best responded to this and other public service obligations when under strong public pressure from Washington and when performance standards are clear and objective, the Commission should adopt CTW's definition of qualifying educational programming.<sup>19/</sup> The definition is at once practical and verifiable, and will assure

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<sup>18/</sup> Id. (footnote omitted).

<sup>19/</sup> CTW also believes that the amount of core programming currently aired must be expanded. Specifically, while we know of no scientific calculation to determine the precise amount of appropriate children's educational programming, we suggest the following concrete minimum: the greater of three unduplicated hours per week or ten percent of the total weekly amount of non-qualifying standard-length children's programming typically aired by the station. This ten percent standard should be incrementally increased to twenty-five percent over the next three to five years.

quality without regulating content. Anything short of this will signal a retreat from the Commission's mission to meaningfully implement the Children's Television Act.

Respectfully submitted,

CHILDREN'S TELEVISION WORKSHOP

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